

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0256 CS**

**Controlled Substance Excise Tax**

**For Tax Period: April 23,1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Controlled Substance Excise Tax – Imposition**

**Authority:** IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

**STATEMENT OF FACTS**

Taxpayer was arrested on January 23, 1993, by the Hamilton County Sheriff's Department. Taxpayer was arrested for possession of marijuana. The Department assessed the Controlled Substance Excise Tax on April 23, 1993, based on 943.90 grams of marijuana. Taxpayer protested the assessment. Additional relevant facts will be provided below, as necessary.

**I. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

(1) delivered,  
(2) possessed, or  
(3) manufactured;  
in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

(1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 943.90 grams of marijuana.

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

The only proof provided by the taxpayer at the administrative hearing was that his criminal charges relating to the possession of the marijuana had been dismissed. However, the Controlled Substance Excise Tax was assessed on the possession of controlled substances. A criminal conviction was not required. Taxpayer provided no proof that the assessment was invalid.

### **FINDING**

Taxpayer's protest is denied.